REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks.

Claims 1-11, 13-33, and 35-40 are pending in the application, of which claims 1-9, 19-32, and 39 are withdrawn. Claims 10, 33, and 40 are independent claims in the elected invention. Claims 12 and 34 were previously canceled. Claims 10, 16, 33, 35, 36, 38, and 40 are amended herein. Support for the claim amendments and additions can be found in the original disclosure. No new matter has been added.

TELEPHONE INTERVIEW

Applicant thanks the Examiner for the telephone interview conducted on Wednesday, December 3, 2008. During the telephone interview, Applicant's attorney, Damon Kruger, discussed independent claim 10 and dependent claim 16, which were rejected under §103(a) in the pending Office Action.

Applicant's attorney understood the Examiner to indicate that the amended portion of claim 10 that recites, "performing a version inquiry consequent to a user initiation of an execution of a program code," was not addressed in the present action, and does not appear to be taught or suggested in the cited references. Applicant relies on at least paragraphs [0056] to [0057] in support for these particular amendments. No new matter was added.

In addition, Applicant's attorney discussed other amendments to claim 10, including providing messaging to a user. The Examiner was also receptive to claim 16 and was believed to indicate that it provided further clarity as to the scope of claim 10.

Applicant thanks the Examiner for considering the above discussion. These concepts, and other remarks, are included below under their respective sections to assist the Examiner in more fully understanding the Applicant's position on the rejections under §103(a).

The Office indicates that claims 24-28 and 39 are directed to an invention that is independent or distinct from the invention originally claims. The Office further notes that these claims are directed to an invention that is substantially the same as the invention(s) received by claims 1-9, 19-23, and 29-32 as discussed in the Office Action dated March 30, 2007. Applicant has designated claims 24-28 and 39 as withdrawn in this Response to Office Action. This action has been made without traverse.

§ 103 REJECTIONS

Claims 10-11, 13, 16-18, 33, and 35 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kester et al., U.S. Patent No. 7,185,015 (hereinafter "Kester") in view of Kottapurath et al., U.S. Patent No. 7,553,490 (hereinafter "Kottapurath"). Claims 14-15, 36-38, and 40 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kester in view of Kottapurath, and further in view of Examiner Official Notice. Applicant respectfully traverses the rejections.

Independent claim 10, as presently presented, recites:

> 10. A method comprising:
> performing a version inquiry consequent to a user initiation of an execution of a program code, the version inquiry includes:
> > determining a current version of the program code satisfying an operating policy that is updated after each new version of the program code is made available for installation on a client; and

determining a client version of the program code on the client

running an update sequence when the client version of the program code on the client is different from the current version of the program code satisfying the operating policy, the update sequence includes:

suspending the execution of the program code; and

generating a message for display to a user via the client, the message including an error message and a user-selectable link to provide access to updated program code having the current version; and

updating the program code on the client with updated program code when the user selects the link and accesses the updated program code.

As an overview, Applicant has amended claim 10 to further clarify the intended subject matter of the invention. In particular, claim 10 now recites a sequence of the events with greater specificity. Claim 10 now recites providing the user "an error message and a user-selectable link" as part of "an update sequence." Support for these particular amendments may be found at least on page 19, paragraph [0058]. Finally, claim 10 recites "updating the program code on the client *when the user selects the link and accesses the updated program code.*"

Kester generally pertains to a system and method of monitoring and controlling application files. (Abstract). More specifically, Kester includes methods that "detect the program requested by a user, determine whether the program is in the categorized application database, send the program and program data associated with the program to an application server module if the program is not in the categorized application database, and apply one or more policies that are associated with the program." (Summary, lines 56-60).

Kottapurath generally pertains to using an updater program to cause the latest program to be transferred from the network server to the local computer and replace the current computer program. (Abstract). "The current program and the latest program each include a startup program configured to interrogate the identifier program, determine if the identification corresponds to the current program, and if the identification does not correspond to the current program, run the updater program. (Summary, col. 1, lines 57-60).

Kester and Kottapurath (hereinafter "cited references"), whether taken alone or in combination (assuming for the sake of argument that they can be combined), fail to teach or suggest the features of claim 10. First, the cited references fail to teach or suggest providing both "an error message and a user-selectable link," as recited in claim 10. A thorough search of both cited references fails to locate a teaching or suggestion of an error message (or any other type of messaging) and a user-selectable link. Kottapurath does disclose a "network link 18," however, this refers to a network connection rather than a user-selectable link that is used to access updated program code having the current version.

It logically follows that the cited references cannot teach or suggest "updating the program code on the client when the user selects the link and accesses the updated program code," because the cited references do not teach or suggest using "the link." In the pending Action, the office relied on Kottapurath as teaching "updating the current version." (Office Action, page 5, line 9). The relevant section of Kottapurath teaches:

> The updater program 26 includes a transferring code segment which controls the computer 12 to download a copy of the latest program

> 32 from the network server 14 using any applicable network transfer
> protocol and store it in the first partition 22a of the hard drive 22 to
> overwrite or replace the current program 24. Upon successful completion
> of the download operation (e.g. using checksum verification, etc.), the
> updater program 26 reconfigures the computers 12 so that on subsequent
> restarts and reboots it will run the latest program 32 which was just stored
> in partition 22a, and then restarts or reboots the computer 12. This latest
> program 32 is redesignated as the new current program 24.

(Kottapurath ,col. 4, lines 7-19). This section of Kottapurath is representative of the processes taught by Kottapurath that are limited to automated processes that fail to include user interaction. Thus, not only does Kottapurath fail to teach or suggest messaging (e.g., "the error message"), but also fails to enable the user to actively participate in updating the program code. Such interaction may be important when a user is not prepared to immediately reboot his/her computer (e.g., due to potential loss of unsaved work, etc.). In addition, messaging may inform the user regarding subsequent actions of the computer, thus preventing or limiting user interference with an update process as recited in claim 10.

The Office does not cite Kester as teaching "updating the program code." Kester is silent as to this recitation. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 10.

Dependent claims 11 and 13-18 depend from independent claim 10 and are allowable by virtue of this dependency, as well as for additional features that they recite. Although Applicant only discusses claim 16 in detail below, Applicant respectfully requests individual consideration of each dependent claim.

Claim 16 recites "the user initiation of the execution of the program code includes a user attempt to access a file associated with the program code such that accessing the

file initiates execution of the program code." The cited references, whether taken alone or in combination (assuming for the sake of argument that they can be combined), fail to teach or suggest the features of claim 16 regarding "a user attempt to access a file associated with the program code such that accessing the file initiates execution of the program code."

The cited references may teach the "execution of the program" as "a program launch." (*See* Kester, Fig. 2, execution launch detection module 210). However, Applicant respectfully submits that claim 16 recites a specific initiation of a program that is not taught or even suggested in the cited references. For example, some users may open an application by selecting the application while other users may select a file (e.g., double click on a file, etc.), that ultimately causes the application to open. Because these two processes are initiated in different ways, one process may initiate a program update while the other process may bypass the program update. Therefore, because the cited references are silent as to "a user attempt to access a file associated with the program code such that accessing the file initiates execution of the program code," Applicant respectfully submits that claim 16 is therefore patentable. Support for the amendment of claim 16 may be found at least on page 13, paragraph [0039] of the specification. No new matter has been added.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 11 and 13-18.

Independent claim 33, as presently presented, recites:

33. A computer program product encoding a computer program for executing on a computer system a computer process, the computer process comprising:

performing a version inquiry consequent a call to execute a program code, the version inquiry includes:

determining a current version of the program code satisfying an operating policy being updated after an updated version of the program code is made available for installation on a client; and

determining a client version of program code on the client;

running an update sequence when the client version of the program code on the client is different from the current version of the program code satisfying the operating policy, the update sequence includes:

suspending an execution of the program code; and

generating an error message for display to a user via the client, the error message including an update option to install the updated program code having the current version; and

updating the program code on the client with the updated version of the program code when the user selects the update option.

Applicant respectfully submits that the cited references, whether taken alone or in combination (assuming for the sake of argument that they can be combined), fail to teach or suggest the features of claim 33. Applicant relies at least on similar reasoning as presented above with regard to claim 10 in support of claim 33. In particular, Applicant submits that the cited references fail to teach or suggest "an *error message* for display to a user via the client, the error message including an *update option* to install the updated program code having the current version." A review of both the cited references fails to locate a teaching or suggestion of an error message (or any other type of messaging) and an update option.

As discussed with reference to claim 10, the cited references logically cannot teach or suggest "updating the program code on the client with the updated version of the program code when the user selects the update option," when they do not teach or suggest the update option. The Office relies on Kottapurath as teaching the "updating the program code," which teaches an automatic process that fails to teach or even suggest user interaction. Because claim 33 includes an "update option" with the error message, and the program code is updated "when the user selects the update option," claim 33 is believed patentable over the cited references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection to claim 33.

Dependent claims 35-38 depend from independent claim 33 and are allowable by virtue of this dependency, as well as for additional features that they recite. Applicant also respectfully requests individual consideration of each dependent claim.

Independent claim 40, as presently presented, recites:

40. A method of updating program code, comprising:
determining a current version of a program code satisfying an operating policy after a call to execute the program code;
receiving an existing version identifier of a program from a client;
comparing the existing version identifier to the current version; and
when the existing version identifier is different from the current version:

suspending the execution of the program code;
generating an error message for display to a user via the client, the error message including a user-selectable link that provides access to updated program code having the current version; and
updating the client version of the program code on the client with the updated version of the program code when the user selects the link and accesses the updated version of the program code.

Applicant respectfully submits that the cited references, whether taken alone or in combination (assuming for the sake of argument that they can be combined), fail to teach or suggest the features of claim 40. Applicant relies on similar reasoning as presented above with regard to claim 10 in support of claim 40. In particular, Applicant submits that the cited references fail to teach or suggest "*an error message* for display to a user via the client, the error message including a *user-selectable link* that provides access to updated program code having the current version." Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection to claim 40.

CONCLUSION

For at least the foregoing reasons, it is respectfully submitted that claims 10-11, 13-18, 33, and 35-40 are in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of the rejections and an early notice of allowance.

The arguments and amendments presented herein were necessitated by the most recent Office Action, and could not have been presented previously because Applicant earnestly believed that the claims were in condition for allowance at the time of filing the previous response.

If any issue remains unresolved that would prevent allowance of this case, **Applicant requests that the Examiner contact the undersigned attorney to resolve the issue**.

Respectfully Submitted,

Lee & Hayes, PLLC

Dated: ___2008-12-22___   By: /Damon J. Kruger, Reg. No. 60400/_____
                                  David S. Lee
                                  Reg. No. 38222
                                  Damon J. Kruger
                                  Reg. No. 60400
                                  206-876-6018